



HEBER CREEPER

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January 3, 1976

Dear Fellows:

The Wasatch Railway Museum and Foundation Inc., met on the evening of Friday January 2, 1976 to discuss the implications of the enclosed documents from the Internal Revenue Service relative to their status as a Tax Exempt entity.

Craig Drury, as a member of the Foundation was present at the meeting, and was appointed by the Foundation to bring the documents to me, with a request for a response from the company as to the next move they might make.

Apparently, the final conclusion of the Foundation members was that ultimately the Company might purchase the assets of the Museum and they should possibly disband. This conclusion was reached only after some lengthy discussion in which there was much feeling that perhaps the company had not treated the Foundation in an ethical manner, and apparently there was a sizeable undercurrent of resentment. However, a majority of the Foundation members ultimately recognized that the continuance of the concept of an operating steam railroad, under any organizational structure was of more importance than the perpetuation of the Foundation.

While I feel badly that there may be some resentment towards the company, I can understand how they might feel this way. I am sure they can all see the potential loss of years of personal effort and, for many, personal financial contributions, all going down the drain without any tangible assets remaining to individual members to show for their efforts and contributions. I have always felt that this was one major flaw in the organizational structure of the Foundation. There was simply no article of incorporation, by-law, or management effort made by any officer, board, or individual member of the Foundation to establish any manner of measurement of acknowledgment of any personal contribution, either financial, or personal effort by any individual Foundation member.

However, I am concerned that whatever conclusion we may arrive at, it has the approval and blessing of the IRS. I know, and this statement is supported by the advice of legal, and accounting counsel, that the Company has done nothing to violate our agreements or responsibilities either with the State of Utah, the Foundation, or the tax laws of the

country. However, I do not want any act to occur that might indicate that there was intent to defraud in the minds of the organizers from the offset of the creation of this relationship.

I also feel that there are enough points in the IRS report that are either wrong or the implication indicated a false conclusion to allow us to challenge the report. However, we should weigh carefully the cost of challenging the report compared with the realvalue of a tax free Foundation to our overall concept. In lieu of an understanding of the refutations of such a organization that we now have from the enclosed IRS study.

We must also analyze the possible acquisitions from the position of the financial capacity of our company, for, as of this moment, we are operating on short term borrowed capital, and there are simply no additional funds available to purchase anything.

Regardless of the classification of the Foundation as a tax free entity, compared with the Heber Creeper's standing as a profit oriented organizational structure, to date the relative merits of the difference between the two would be strictly an academic discussion, as our records indicated that we are about as tax free in actual practice as any Foundation ever created.

In order for us to analyze our individual positions and come to a conclusion as rapidly as possible at our next directors meeting, I am taking the liberty of underlining and numbering certain key phrases and statements and listing below a personal reaction to them.

1. The beginning statement, certainly indicated that the agents examination of the operations by interview with company personnel was brief and with little analysis. In fact, there isn't anyone in the employment of the Company I can find who was interviewed. It would appear to me that an analysis of the IRS as to actual dollars spent, and the relative value of the total operation, including buildings, company owned equipment, value of leased land, responsibility for repairs and maintenance, not only of equipment but also of right-of-way, would indicate that a 10% return on that portion of the total investment was in fact a generous offer.

2. I have never seen this bill of sale and I assure it refers to a document drawn between the National Railway Historical Society and the Foundation. I believe we should have a copy of it prior to making any proposal.

3. I think this fairly states the position of the Foundation. I am sure we felt this when we all mutually agreed on the present structure of relationship. An analysis of events occuring since we began indicates that the present setup is just as poor for the company as it is for the Foundation and the IRS, at least to the writer. However, any agreement

as to the proper relationship for all might generate much heated disagreement.

4. Again, I feel the Agent is inferring that the agreed upon compensation is not adequate. I feel that this is a major area that could be refuted, but question if an successful defense of this point would have anything to do with the conclusion reached.

5. In analyzing the Foundation, I would wonder how they could ever operate a scenic steam railroad under a State Park Franchise, meet the conditions of the State Park in relation to a Consignee, and not be in violation of this ruling. I think this is the key, and that it would appear to be impossible for a private tax free Foundation to operate a franchise of the State of Utah and comply with this ruling unless it was a truly massive organization, such as a Ford Foundation etc.

6. In lieu of this statement (5), I would have to concur with the IRS's basic conclusion. However, I am concerned whether or not the Foundation might have any liability upon examination, and if our company should not wait to get this determination prior to any negotiations between the Foundation and the Heber Creeper. It would also appear to me that since it is the Foundation, and not the Company that is in violation of the IRS regulations, that a written appeal and plan should be sent from the Foundation to the Company in order for the company to respond, and in order for us to assure ourselves that we in turn would not be subject to criticism from the IRS.

Very truly yours,



Lowe Ashton

